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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

CASE NO. 2:20-CR-012-MCE

12 Plaintiff,

**STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER**

14 | REGINALD THOMAS,

DATE: August 6, 2020

TIME: August 3,
TIME: 10:00 a.m.

TIME: 10:00 a.m.
COURT: Hon. Morrison C. England, Jr.

This case is set for a status conference on August 6, 2020. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” This and previous General Orders, as well as the declarations of judicial emergency, were entered to address public health concerns related to COVID-19.

1 Although the General Orders and declarations of emergency address the district-wide health
2 concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision
3 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record
4 findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-
5 record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
6 failure cannot be harmless. *Id.* at 509; see also *United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
7 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
8 findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, 617, 618, and 620 and the subsequent declaration of judicial emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

¹ The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

1 1. By previous order, this matter was set for status on August 6, 2020.

2 2. By this stipulation, defendant now moves to continue the status conference until

3 September 24, 2020, and to exclude time between August 6, 2020, and September 24, 2020, under Local
4 Code T4.

5 3. The parties agree and stipulate, and request that the Court find the following:

6 a) The government has represented that the discovery associated with this case
7 includes over 400 pages and/or files of reports and related documents, photographs, audio
8 recordings, and videos. All of this discovery has been either produced directly to counsel and/or
9 made available for inspection and copying.

10 b) Counsel for defendant desires additional time to continue to conduct investigation
11 and research related to the charges, review discovery for this matter, provide redacted discovery
12 to the defendant, to discuss potential resolutions with his client, and to otherwise prepare for
13 trial.

14 c) Counsel for defendant believes that failure to grant the above-requested
15 continuance would deny him/her the reasonable time necessary for effective preparation, taking
16 into account the exercise of due diligence.

17 d) The government does not object to the continuance.

18 e) Based on the above-stated findings, the ends of justice served by continuing the
19 case as requested outweigh the interest of the public and the defendant in a trial within the
20 original date prescribed by the Speedy Trial Act.

21 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
22 et seq., within which trial must commence, the time period of August 6, 2020 to September 24,
23 2020, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
24 T4] because it results from a continuance granted by the Court at defendant's request on the basis
25 of the Court's finding that the ends of justice served by taking such action outweigh the best
26 interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: July 31, 2020

McGREGOR W. SCOTT
United States Attorney

/s/ TANYA B. SYED
TANYA B. SYED
Assistant United States Attorney

Dated: July 31, 2020

/s/ OLAF W. HEDBERG
OLAF W. HEDBERG
Counsel for Defendant
REGINALD THOMAS

ORDER

IT IS SO ORDERED.

Dated: August 4, 2020


MORRISON C. ENGLAND, JR.
SENIOR UNITED STATES DISTRICT JUDGE